

I N D E X

SEPTEMBER 3, 2015

<u>Government's</u> <u>Witness:</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Veronique Valliere	6	27	34	35
Certificate of reporter				62

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P R O C E E D I N G S

(The proceedings convened on September 3, 2015, commencing at 1:23 p.m.)

THE COURT: Before we proceed any further, if counsel would enter their appearance, please.

MS. LARSON: Good afternoon, Judge, Amy Larson for the government.

MS. HAINES: Stephanie Haines for the United States as well.

MR. PASSARELLO: Steven Passarello for the defendant.

MR. KISS: Daniel Kiss for the defendant.

THE COURT: Thank you. I will also note that the defendant is present.

This proceeding was scheduled due to the filing by defendant of a motion to exclude expert testimony. The government filed a response to that motion, and then the defendant filed a reply to the response.

After reviewing those documents I determined that a Daubert hearing was called for and would be helpful to the Court, and the issue is whether the government's expert will be permitted to offer opinion testimony in the areas that are set forth in the filings.

I will note that subsequent to scheduling this proceeding, that the United States has raised the issue of

1 excluding testimony with regard to defendant's proposed
2 expert.

3 I also noted that the defendant filed an amended
4 witness list, which included an expert witness, Dr. Frank M.
5 Dattillo. At some point, before we adjourn for the day, I
6 would like to address that issue to see if we need to schedule
7 a comparable hearing on that issue. And if we do, when we can
8 schedule that based on the availability of defendant's expert
9 witness. My thought was that perhaps we could do that
10 following jury selection on Tuesday, if the person's
11 available.

12 The reason I am suggesting that is that when we
13 finally seat the jury on Tuesday, it was my intention to
14 adjourn and begin jury instructions and opening statements on
15 Wednesday morning. So that may leave us some time on Tuesday
16 to have a Daubert hearing, if we need one on that issue.

17 There are also some other motions still pending
18 that I am aware I need to rule on before counsel present their
19 case beginning next week, and we are working on those and we
20 intend to get them filed as soon as possible. I realize that
21 you need to know these things before you can proceed with your
22 presentation of the case, so we will work to get those
23 completed.

24 All right. That's the introductions. I do have
25 some questions for the parties, but I will await the

1 presentation today and they may get answered during the
2 presentation.

3 Attorney Larson, are you presenting this on behalf
4 of the government?

5 MS. LARSON: Yes, Judge.

6 THE COURT: Then you may proceed.

7 MS. LARSON: Judge, at this time the government
8 would call Dr. Vary a /TPHAEU /WAOEU air. She is out in the
9 witness waiting room, so we will go grab her.

10 THE COURT: While we are waiting for that witness
11 to come in, I just want to advise counsel, you can see that we
12 have actually added some seats in the courtroom and moved some
13 things around. The reason is I am intending to call 70 jurors
14 for jury selection on Tuesday, which is more than we normally
15 call. So we've added some seats, and we are hopeful that we
16 can fit all of the called jurors into the seats that we have.

17 Knowing that the media will be interested in this
18 case, I have planned for and reserved some seats in the back
19 or up here in the front, whichever works out, for the members
20 of the media that show up on Tuesday. After that we won't
21 have all the prospective jurors to try to find seats for, so
22 it should be easier after that.

23 Okay. Attorney Larson, go ahead.

24 VERONIQUE VALLIERE, GOVERNMENT'S WITNESS, SWORN

25 MS. LARSON: May I inquire, Your Honor?

1 THE COURT: You may. Before you do that though,
2 the microphone is only so long, and I realize that sometimes
3 if you face counsel you may be speaking away from it. We may
4 have it turned more toward counsel for the trial. What we
5 were doing here was to try to set it up so that we could have
6 the interpreters seated with the microphone, so we were moving
7 the witness box around a little bit. So if it is not working
8 for you to have it the way it is, we can easily move that. It
9 is on wheels so we can turn it a little bit.

10 Would you prefer that or not?

11 THE WITNESS: I plan to face Your Honor, since I
12 believe the questions are for your benefit.

13 THE COURT: All right. Go ahead.

14 MS. LARSON: Thank you, Judge.

15 DIRECT EXAMINATION

16 BY MS. LARSON:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. Would you please state your name and spell your last name
20 for the record.

21 A. Certainly. My name is Dr. Veronique Valliere.

22 V-A-L-L-I-E-R-E. Would you like my first name as well?

23 V-E-R-O-N-I-Q-U-E.

24 Q. And what is your occupation?

25 A. I'm a licensed psychologist in the state of Pennsylvania,

1 as well as a diplomate in forensic psychology.

2 Q. Do you specialize in any areas of psychology?

3 A. I do. My specialty is interpersonal violence, including
4 sexual assault, sexual abuse of children, physical abuse,
5 domestic violence, and treatment and assessment of
6 perpetrators and victims.

7 Q. Can you describe your educational background for the
8 Court.

9 A. Certainly. I have a bachelor's in psychology that I
10 received from St. Mary's College in Maryland in May 1987, and
11 a doctorate in clinical psychology from Rutgers University
12 that I received in January 1993, as well as my diplomate in
13 forensic psychology that I received in 2012.

14 Q. Now, you just used a word I'm unfamiliar with,
15 "diplomate." Can you explain for the Court what that is.

16 A. It's basically similar to a board certification. I have
17 to pass a test, and my materials are peer reviewed, and I have
18 to pass a variety of things to get awarded this certification
19 or status.

20 Q. And so after completing your education have you received
21 any additional training in the field of psychology?

22 A. Yes. I had to receive postdoctoral training to become a
23 licensed psychologist. And since that time have received
24 countless hours of self study, continuing education credits,
25 and necessary training to remain on the Pennsylvania Sexual

1 Offender Assessment Board.

2 Q. Are you employed?

3 A. I am.

4 Q. And how are you employed?

5 A. I am owner of two outpatient practices. One where I
6 treat children and adults, victims of abuse, and have
7 clinicians under me. And another outpatient violent offender
8 program where we treat all types of violent offender programs,
9 the majority being sexually offenders.

10 Additionally, I'm on, as I mentioned, Pennsylvania's
11 Sexual Offender Assessment Board, and have been since 1997,
12 and have been reappointed five times by the governor.

13 Q. Now, so in that capacity do you see individual patients?

14 A. I do.

15 Q. And do you continue in a course of diagnosis and
16 treatment with those individual patients?

17 A. Yes.

18 Q. What percentage of patients come to you in order to seek
19 treatment for sexual abuse?

20 A. I would say the majority come for -- any type of abuse,
21 but the majority of the victims of abuse are sexual abuse
22 victims, both adults and children.

23 Q. And do these adults include individuals who were
24 victimized as children?

25 A. Yes.

1 Q. Now, approximately how many individuals have you seen in
2 your professional capacity who have been the victims of child
3 sex abuse?

4 A. I have no idea. Hundreds.

5 Q. I believe you mentioned your work with individuals who
6 have committed sexual offenses and your participation in
7 various boards here in the state of Pennsylvania.

8 Can you tell the Court approximately how many individuals
9 who've had the occasion to work with who have committed sexual
10 offenses.

11 A. Well over a thousand, probably in the thousands.

12 Q. And does this include individuals who have committed
13 sexual offenses against children?

14 A. Yes.

15 Q. Now, I believe you've already described for the Court,
16 but your work with the State of Pennsylvania, how did that
17 come about, and specifically with respect to sex offenders?

18 A. Well, the process is a vetting process where I was the
19 director of an outpatient sexual offender treatment program
20 that came to the attention of the state board when it was
21 first formed in the late '90s, and then had to go through a
22 governor appointment-ship and have to be reappointed every
23 four years.

24 Q. You testified earlier that you received postdoctorate
25 training in the field of psychology. Does any of that

1 additional training relate to the sexual abuse of children?

2 A. Yes. I have to go through quarterly trainings to remain
3 on the Sex Offender Assessment Board, achieving a certain
4 amount of continuing education credits to maintain my
5 licensure. And I'm a member of the Association for Treatment
6 of Sexual Abusers, which requires at least 30 hours of
7 relevant training biannually.

8 Q. You indicated previously that you were licensed. How
9 long have you held a license?

10 A. Since, I believe it's May 1995.

11 Q. And what is that license specially allow you to do?

12 A. Practice psychology in the state of Pennsylvania.

13 Q. Now, I believe you mentioned it, but I want to circle
14 back, do you hold any specialized credentials?

15 A. The diplomate in forensic psychology.

16 Q. Now, have you ever taught in any of these fields?

17 A. Yes.

18 Q. And where did you teach?

19 A. I've done a variety of trainings, both nationally and
20 internationally, as well as for the Department of Justice,
21 FBI, Bureau of Indian Affairs, U.S. Military in victim
22 behavior, victim dynamics, dynamics of sexual offenders,
23 investigating sexual offenders, interviewing victims. So a
24 broad range within the field of child sexual abuse.

25 Q. Did you ever teach at a university?

1 A. I did as an early graduate -- or a late graduate student.

2 Q. And was that the university of Princeton?

3 A. Yes.

4 Q. Can you indicate for the Court what you taught at at
5 Princeton.

6 A. Abnormal psychology.

7 Q. Are you a member of any professional organizations?

8 A. I am.

9 Q. Can you describe to the Court which ones.

10 A. American Psychological Association, the Association for
11 Treatment of Sexual Abusers, the American Society for the
12 Prevention of Abuse of Children, I believe the Pennsylvania
13 Polygraph Association.

14 Q. Do you subscribe to any professional journals?

15 A. Yes.

16 Q. And which ones?

17 A. The American Psychologist, the Journal of Clinical and
18 Consulting Psychology, Trauma and Violence and Public -- I
19 believe it's called Psychology, Public Policy and the Law, as
20 well as journals for abuse of children.

21 Q. And do you read articles in these journals?

22 A. I do.

23 Q. And do these articles and research keep you up to date on
24 the current trends in your field of expertise?

25 A. Yes.

1 Q. Do you also practice in the fields of both forensic
2 psychology as well as clinical psychology?

3 A. Yes.

4 Q. Can you explain the difference between clinical and
5 forensic psychology.

6 A. Certainly. Clinical psychology would be all my work in
7 treating people for mental disorders or trauma or things that
8 present who are not legally involved. So in that role I
9 perform evaluations, diagnostic assessments, treatment needs
10 assessments, as well as provide individual and group therapy,
11 couples counseling, and supervise my clinicians who provide
12 that care.

13 In my forensic role I basically help my clinical work
14 interface with the legal needs. So I may answer questions for
15 the court such as whether or not somebody meets criteria for
16 classification as a sexually violent predator. I do forensic
17 interviews of children in investigations for family court,
18 civil court. I may answer questions for custody court or do
19 expert testimony, explaining to the Court psychological
20 concepts or constructs, as well as I often evaluate offenders
21 to make recommendations to the court on rehabilitation
22 potential or risk assessment.

23 Q. You mentioned you have experience conducting forensic
24 interviews for family court. Do these forensic interviews
25 involve individuals who have been sexually abused?

1 A. Yes, primarily sexually abused. Sometimes child physical
2 abuse.

3 Q. Now, have you received any specialized training or
4 education on conducting forensic interviews?

5 A. Yes, I have.

6 Q. Does that include trainings and education on the manner
7 and types of questions which should be asked during forensic
8 interviews?

9 A. Right. How to question children and how to understand
10 language and developmental issues that impact interviewing, as
11 well as how victims disclose and what to expect during an
12 interview.

13 Q. Have you ever written on this topic?

14 A. I've participated in a joint writing effort for the
15 Department of Justice on a manual on interviewing child
16 victims that was supposed to have come out already, but the
17 government.

18 Q. Approximately how many forensic interviews have you
19 conducted of individuals who have been sexually abused?

20 A. Probably a few hundred over the course of 20 years.

21 Q. Now, can you estimate the number of child victims you
22 have interviewed in your profession?

23 A. Like I said, in the hundreds.

24 Q. Have you testified and been qualified as an expert
25 witness before?

1 A. Yes, I have.

2 Q. In what fields have you been qualified as an expert?

3 A. In clinical psychology, forensic psychology, in sexual
4 assault, interpersonal violence, domestic violence, sexual and
5 physical abuse of children, sexual offender perpetrators, as
6 well as domestic violence perpetrators, and victim and
7 offender dynamics.

8 Q. Now, in which courts have you testified and been
9 qualified as an expert on this vast array of topics?

10 A. Numerous counties in Pennsylvania, as well as U.S.
11 military court well over 50 times. I've testified in Germany
12 and Italy, and across various states in the United States.

13 Q. Have you ever been denied qualification as an expert
14 witness in the fields of child sexual abuse, victim offender
15 dynamics, or offender characteristics?

16 A. No, I haven't.

17 Q. Doctor, are you familiar with the term counterintuitive
18 behavior?

19 A. I am.

20 Q. What is that?

21 A. Counterintuitive behavior is a term -- it's not a
22 clinical term -- but it's a lay or legal term that describes
23 behaviors of victims that seem to run counter to our
24 expectations of victims who were, quote/unquote, real victims
25 of sexual assault.

1 The reason we don't use this term clinically is victim
2 behavior is very varied, so there is no counterintuitive
3 behavior. We tend to talk about victim dynamics or victim
4 behaviors in response to assault or trauma.

5 Q. So if there is a wide array of reactions or responses to
6 trauma, does this include a wide array of responses to trauma
7 by, for example, child sex abuse?

8 A. Absolutely.

9 Q. And are these responses or wide array of reactions
10 influenced by any set of factors?

11 A. Yes. Everybody has an individualized response to trauma
12 or traumatic events or sexual abuse. And those responses are
13 influenced by internal factors: Who the victim is, what they
14 bring to the table in terms of their own understanding, shame,
15 guilt, feelings of self blame, and cultural and religious
16 upbringing.

17 There are external factors, including what resources they
18 have in their environment, how supportive or educative the
19 environment is of abuse, access to resources, family and
20 social support, the influence of the perpetrator on the
21 community of the abused.

22 And then there are offender factors and how the offender
23 themselves influences the victim's behavior. Offender, the
24 relationship of the offender, the power that the offender has
25 over the victim, the dependency of the victim on the

1 perpetrator, and other interpersonal things that go on between
2 perpetrators and victims, including threats, love, trust,
3 affection, need. Those kind of things all factor into how a
4 victim responds and in what manner.

5 Q. Do various factors such as age or gender or socioeconomic
6 status also affect responses to trauma?

7 A. Absolutely.

8 Q. Does the cognitive development or ability of an
9 individual also influence the response to trauma?

10 A. Yes.

11 Q. Now, based upon your training, education, and personal
12 experience as a clinical psychologist, is it uncommon for
13 people to delay disclosure of sexual abuse?

14 A. No, not at all.

15 Q. Is there also literature and/or research that has been
16 published with regard to delayed disclosure?

17 A. Yes. In fact, some people never tell. And when we talk
18 about disclosure we tend to talk about telling to an
19 authority, not just randomly talking to a peer. But even
20 telling anybody is not uncommon, so telling law enforcement or
21 an official capacity is often either never done or delayed
22 quite extensively.

23 Q. Is the literature and/or research on this area of
24 disclosure consistent with your years of experience as a
25 clinical psychologist?

1 A. Completely consistent.

2 Q. Now, can you describe for the Court what delayed
3 disclosure is. Is that what we're talking about here?

4 A. In terms of you asking me, I guess delayed disclosure,
5 the expectation or the evaluation of what a delay is,
6 depending on the listener, can be anywhere from days to years
7 or decades.

8 So victims often fail to tell and do not pursue legal or
9 official response to their sexual assault. Most victims
10 don't. We know it's a highly underreported crime. But the
11 idea that somebody -- delayed disclosure is a term that
12 implies that the victim didn't tell as soon as they're
13 expected to tell or provide immediate outcry after the assault
14 or abuse stops.

15 Q. In your experience is such a, quote/unquote, delayed
16 disclosure common in these types of scenarios?

17 A. In which type of scenario, just general child sex abuse?

18 Q. Child sex abuse, yes.

19 A. Yes. Generally children, it's not uncommon for them not
20 to tell at all or to wait months, days, or years, depending on
21 the circumstance and if there's a triggering event that
22 reveals disclosure.

23 Q. So we'll get to triggering events, but I want to ask you
24 about are there any certain factors that may influence how or
25 when an individual discloses sexual abuse?

1 A. Absolutely. Individuals have to struggle with, first
2 off, identifying the fact that there are -- they have been
3 abused, the nature of the abuse, and who to tell. So if there
4 are not resources or they're not educated about what to do
5 with that disclosure that may prevent disclosure. They may
6 not disclose because they're ashamed, humiliated, or fear they
7 won't be believed, or can't tolerate the process of disclosure
8 because of the trauma related to it, so they don't tell. They
9 just feel like they want to get over it.

10 The perpetrator may still be in their lives or engaged
11 with them, so telling may risk serious consequences. They may
12 not have anybody to tell or may live in an environment where
13 they're not valued or sexual abuse is accommodated or there's
14 no use to tell, they've seen other people try to tell.

15 If they rely on the perpetrator for things like basic
16 needs, supporting the family, food, kindness, they may not
17 tell so that they don't have to go through the loss of the
18 good things that the offender provides.

19 They may fear they won't be believed. They may fear
20 retaliation from the perpetrator or the community for telling.
21 Or they may just not want to get involved in the process that
22 can be instigated by telling at all.

23 Q. Does the gender of a particular victim affect the way or
24 the timeliness of the disclosure?

25 A. It depends. I think there are general -- I know there

1 are general trends that male victims, especially of male
2 perpetrators, tend not to disclose as much, and that can be
3 exacerbated if they're raised in an environment, family
4 environment, cultural environment, or religious environment
5 that has prohibitions against homosexuality, which victims
6 often mistake abuse for homosexuality.

7 Boys tend to be under more expectation, pressure to
8 fight, to resist and not be victims at all, so are not
9 necessarily socialized the same way as girls to tell or
10 identify as a victim.

11 Q. Can the manner or types of questioning that a victim
12 experiences, can that impact the way or the timeliness of a
13 disclosure?

14 A. The way -- I'm not sure what you're asking.

15 Q. Can the types of questions that a victim is asked, can
16 that impact the way or the timeliness of the disclosure?

17 A. I assume if a victim's being questioned there's some hint
18 of a disclosure already. But victims, the way they disclose
19 can be profoundly impacted by interviewer questioning, what
20 questions are asked, how the questions are asked. Which is
21 why we have to go through training to make a solid -- help
22 facilitate a solid disclosure.

23 If the victim isn't even being interviewed but is
24 beginning to disclose and is faced with the listener's
25 disgust, disbelief, or accusations or victim blaming, they may

1 stop disclosing, they may change the disclosure, they may
2 recant, they may disclose to somebody else instead, or just
3 give pieces of disclosure. So the interviewer, in fact, is
4 tremendously important.

5 Q. So let's take that piece by piece. You mentioned
6 piecemeal disclosure. Can you explain to the Court what
7 piecemeal disclosure is.

8 A. Piecemeal disclosure is a phrase used to describe the
9 process of disclosure. In general, victims do not tell
10 everything all at once. They tend to -- and this is true for
11 victims of physical violence as well. They tend to give a
12 piece of the disclosure, see how that's managed, how they are
13 able internally to tolerate it, if they can stand talking
14 about it add other details as they go along.

15 And that's both a conscious process and a traumatic
16 process in terms of accessing memory and pieces of memory, but
17 also being able to cope with the information they're
18 disclosing.

19 Often as victims learn more about how the environment
20 will take their disclosure or what questions are asked or what
21 they even identify as abuse, more and more details or more and
22 more things will come out over time.

23 Q. Now, is there research on this piecemeal or incremental
24 disclosure?

25 A. Yes.

1 Q. And do you also see incremental or piecemeal disclosure
2 in your practice?

3 A. Oh, absolutely.

4 Q. Have you observed individuals disclosing sexual abuse
5 over time?

6 A. Yes. In fact, that's more my expectation than knowing
7 the first or second time they meet me they're going to tell me
8 everything. We tell what we can tolerate.

9 Q. Is that clinical experience consistent with the research
10 and literature on this subject?

11 A. Yes.

12 Q. Now, you also mentioned in your testimony trigger events
13 or triggering events, can you give us some examples of events
14 that would trigger a disclosure.

15 A. There's often in a victim's life something that happens
16 that helps them decide to disclose. Sometimes they become
17 cognitively able to understand and express the abuse or
18 internally or psychologically able to disclose.

19 Sometimes they get education and support which helps them
20 be more free from the shame or self blame that inhibited their
21 disclosure. They may receive information on resources,
22 understanding that what happened to them was wrong, there are
23 ways to get help.

24 They may -- for instance, if it's a child in a family or
25 somebody who's leaving the care of a caretaker, they may now

1 have the freedom to tell because they're out of the
2 caretakers's hold. They may learn of other victims and
3 realize that they're not the only one with the problem. They
4 may disclose to protect other victims, motivated by a sense
5 that the offender may be targeting somebody else.

6 They also -- many victims tell because they just decide
7 they can't take it anymore or they thought they could just get
8 over it, but their symptoms continue to increase or they get
9 old enough to become aware of the impact of their abuse, for
10 instance, if they become sexually active or decide to have a
11 family.

12 So there are events in somebody's life which makes them
13 decide that this is a time to tell and they're often very
14 personal.

15 Q. Could the introduction of a supportive person, like a
16 spouse or a teacher or an additional caretaker, could that
17 trigger disclosure?

18 A. Actually, positive social support is one of the biggest
19 influences in disclosing and seeking help for sexual assault.

20 Q. Now, based upon your training and experience, are
21 recantations of abuse allegations uncommon?

22 A. They're not uncommon, no.

23 Q. Can you explain for the Court what a recantation is.

24 A. A recantation is withdrawing a true allegation of abuse.
25 So somebody will disclose the actual abuse and then take it

1 back. So it's different than a fabrication or a lie, which is
2 just saying a lie or a false or fabricated allegation.

3 Q. Now, is this common even in the face of medical evidence
4 or, perhaps, documentary evidence if a child or an individual
5 is being, perhaps, assaulted on videotape or there is a
6 picture capturing their abuse?

7 A. I don't know if I would say that it's common, that it
8 happens all the time, but up to a third of victims can recant,
9 even in the face of actual documented evidence.

10 Q. Now, what factors can influence or lead to a recantation?

11 A. Social support or actually lack thereof, feeling
12 disbelieved, feeling unsupported, feeling penalized for the
13 abuse.

14 In my practice most children have recanted after being
15 placed into foster care or understanding that their loved one
16 would have to go to jail. They feel like the family has
17 disintegrated and it's their fault, so if they just take it
18 back everything can go back together.

19 So there's often very serious consequences for victims to
20 disclose that they don't anticipate and aren't ready for,
21 including coming to court and having to be repeatedly
22 interviewed or moved or disrupted in their life.

23 They also may recant because they find that reliving or
24 telling about their trauma in front of strangers is far too
25 painful and distressing for them and they can't do it anymore.

1 Q. Could pressure or coercion or bribery lead to
2 recantation?

3 A. Absolutely. Especially if the victim is feeling
4 intimidated, threatened, or is convinced they won't be
5 believed.

6 Q. Now, can an interviewer facilitate a recantation?

7 A. Yes.

8 Q. Can you explain to the Court how that could happen.

9 A. If the interviewer reacts in an accusing or blaming or
10 shaming way, if they're too aggressive and confrontative. If
11 they question the victim on things that they might be
12 struggling with like, well, if it was so bad why did you go
13 back, why didn't you fight, why didn't you say no. And the
14 victim can get intimidated or coerced into feeling that they
15 are to blame for the assault and guilty about getting somebody
16 else in trouble, again getting confused about whether or not
17 this is abuse or not.

18 Q. Doctor, did you interview any of the victims that the
19 government alleges were sexually abused as children in the
20 case of United States v. Joseph D. Maurizio Jr.?

21 A. No.

22 Q. Have we discussed any details of this case?

23 A. Other than they were abused as children and they're from
24 another country, no.

25 Q. Is that why you haven't tailored your testimony today to

1 the specific facts of this case?

2 A. Right.

3 Q. And, instead, your testimony has remained more
4 generalized?

5 A. Yes.

6 Q. Has your testimony today been consistent with your
7 specialized knowledge, training, and experience?

8 A. Entirely consistent.

9 Q. Has it been based on your background and your experience
10 in forensic and clinical psychology, including your work with
11 hundreds of individuals who have been the victims of sexual
12 abuse?

13 A. Yes.

14 Q. Now, based upon your training and experience in these
15 fields, including seeing and treating patients, training,
16 giving lectures on these topics that we've discussed today, is
17 the average person familiar with the topics we've just
18 discussed?

19 A. In my experience, no. Even from working with other
20 professionals, including Children and Youth caseworkers,
21 investigators, law enforcement, it's my experience that we
22 still maintain some faulty expectations for victim response,
23 and that these faulty expectations often cloud our
24 understanding of how victims, quote/unquote, really act and
25 what are the varied and array-type of responses a victim can

1 have.

2 Q. Can you elaborate for the Court when you say "faulty
3 expectations for victim behavior" what some of those faulty
4 expectations are, or commonly are.

5 A. Well, I think from the outside we view child sexual
6 assault as so heinous that we think that victims should
7 immediately identify that they were abused, immediately hate
8 the perpetrator, feel supported in making an allegation, make
9 a clear and strong and complete allegation, not feel blamed or
10 shamed by the abuse, and not feel any attachment or
11 willingness to be with the offender. And that just is not
12 true.

13 MS. LARSON: If you could give me one second,
14 Judge.

15 THE COURT: Go ahead.

16 MS. LARSON: Judge, I have nothing further.

17 THE COURT: All right, thank you.

18 Counsel, which of you will be questioning?

19 MR. KISS: I will be, Your Honor. Thank you.

20 THE COURT: All right. Go ahead.

21 MR. KISS: Thank you, Judge. If I may proceed,
22 Your Honor?

23 THE COURT: You may.

24 MR. KISS: Thank you.

25 CROSS-EXAMINATION

1 BY MR. KISS:

2 Q. Good afternoon, Doctor. My name's Dan Kiss. I'm one of
3 Mr. Maurizio's attorneys. How are you?

4 A. Good afternoon.

5 Q. Now, Doctor, as I understand it, correctly, your degree
6 is a clinical psychology doctorate; is that correct?

7 A. That's right.

8 Q. And it's not a Ph.D., correct?

9 A. No, it's a doctorate in psychology --

10 Q. Okay.

11 A. -- or --

12 Q. Very good. I understand. Thank you.

13 And looking at your curriculum vitae, you would agree
14 with me that your last publication, at least according to
15 that, was in 2007?

16 A. Right. I'm primarily a clinician --

17 Q. Sure.

18 A. -- and trainer, not a researcher.

19 Q. Okay. So you don't actually go out and do the research
20 yourself? If I understood your testimony to the government,
21 you rely on reading through journals, as well as your own
22 practical experience?

23 A. Primarily, yes. I have done research, but I have not --

24 Q. You haven't done it --

25 A. -- in a long time. Right.

1 Q. I understand. I understand.

2 And most of your research is actually from the '90s?

3 A. Right.

4 Q. Would that be accurate?

5 A. That's accurate.

6 Q. Thank you.

7 Now, Doctor, we talked about a couple things here, and
8 I'd like to touch base back on some of them. First and
9 foremost, you talked about forensic interview. I'm
10 actually -- I'm also certified, so I understand the pleasure
11 of going through all of those trainings to be a certified
12 forensic interviewer.

13 You would agree, forensic interviewing is best practice?

14 A. Yes.

15 I'm not a certified forensic interviewer; I've just been
16 trained in forensic interview --

17 Q. Oh, okay. I understand. And I think that's what I am,
18 as well. It's not the whole way, but you've gone through the
19 training and stuff?

20 A. Right.

21 Q. I understand.

22 But, again, you would agree that it is best practice, as
23 early as possible, for a child victim or alleged child victim
24 to be given a forensic interview?

25 A. As early as possible?

1 Q. Once an initial disclosure is made.

2 A. If you can. There are limited resources all over the
3 world, so --

4 Q. Sure.

5 A. -- you can't apply best standards of practice to even so
6 much as rural Pennsylvania.

7 Q. Absolutely. And are you aware in this case whether any
8 forensic interviews were ever conducted by anyone?

9 A. I don't know anything specifically about this case except
10 there were multiple victims and they're from another country.

11 Q. Sure. Now, talking about forensic interviewing and some
12 of the problems of normal interviewing, some of the problems
13 would be leading questions, for example?

14 A. There may be.

15 Q. And some of the problems that I think you stated were
16 interviewers who don't know the subject matter very well, and
17 maybe put their own personal opinions or impressions through
18 their questioning?

19 A. You're equating two different things. So just a poor
20 interview; is that what you're talking about?

21 Q. Yes. Yes.

22 A. Yeah, there are a lot of ways to give a poor interview.

23 Q. Okay. And, in fact, there could be the opposite of some
24 of the interviews you were talking about, and there could be
25 interviews where you're kind of pressuring a child to say

1 something the child may not want to say?

2 A. Sure.

3 Q. Okay. And, again, you don't know if any of that has
4 occurred in any of these situations?

5 A. I have no idea.

6 Q. Okay. Now, your practice up in the Allentown area, do
7 you often deal with children from Honduras?

8 A. Not often, no.

9 Q. Okay. And your research, you would agree with me that
10 the vast body of research in clinical psychology and cognitive
11 psychology and forensic psychology deals with what I call
12 "first world," Western Europe, the United States, Canada?

13 A. Well, in some of the social sciences that's true, because
14 third world countries don't have phones or phone interviews,
15 and they don't have universities for freshman classes, so
16 there is a lot of research that we rely on set bodies of
17 people, per se, right.

18 Q. Okay. Now, you've made a lot of mention in this case
19 about a recantation, and I think that was the major point of
20 your earlier testimony.

21 Now, sometimes recantation is because it actually
22 occurred, right?

23 A. Recantation is because the abuse actually occurred?

24 Q. It did not -- because it did not occur. I'm sorry.

25 A. I guess I don't consider that recantation. I consider

1 that taking back a lie.

2 Q. Okay. Okay. So there is a difference -- and I guess it
3 was poor terminology on my part between taking back a lie and
4 recantation.

5 A. Right.

6 Q. And both do exist out there in the world of child abuse,
7 correct?

8 A. Sure.

9 Q. And you said that the numbers are up to a third of
10 children may recant at some point?

11 A. Right.

12 Q. And, but you said up to a third. It could be as low as 8
13 percent according to some studies, correct?

14 A. Right.

15 Q. Okay. So there's a, boy, about a 20 percent range of
16 what science currently tells us whether a child can or can't
17 recant?

18 A. That's right.

19 Q. Okay. And typically children who are younger in age are
20 more vulnerable to the recantation process?

21 A. That's typical, but we also know that there are gender
22 and cultural biases to that as well.

23 Q. Sure. Sure. And, again, you have no knowledge of how
24 any of the disclosures were made in this case?

25 A. Or actually if anyone actually recanted. I just know I'm

1 actually asked to talk about that.

2 Q. Oh, okay. I understand.

3 Now, you said that oftentimes recantation involves
4 pressure from a family member or external forces or offender
5 forces, something like that, correct?

6 A. It can. Or it can result in the victim feeling so
7 pressured of not being able to go through the process that
8 we're asking them to go through.

9 Q. But that pressure's somehow put on them from something
10 else?

11 A. Or it could be internal pressure --

12 Q. I understand.

13 A. -- shame and things.

14 Q. And most of the studies have shown that the external
15 pressures come from a family member, the classic scenario;
16 stepfather abuses child and mother doesn't want stepfather to
17 leave.

18 That's the classic scenario, correct?

19 A. That's the classic scenario described in the research.

20 Q. Uh-huh. And that's a lot of what the research talks
21 about, is kind of that type of scenario?

22 A. Yes. That's what we have access to. I personally have
23 clinical experience with people who have recanted for other
24 reasons as well.

25 Q. Okay. Now, Doctor, are you familiar with the very recent

1 psychology article that came out talking about the
2 reputability of psychology experiments?

3 A. You have to give me more than that.

4 Q. Sure. Well, basically, it came out on the 28th of August
5 saying that basically 75 percent of social psychology research
6 and 50 percent of cognitive psychology research -- they were
7 using 2008 in the major journals that you mentioned
8 actually -- were not able to be replicated in independent
9 tests.

10 Are you aware of that?

11 A. I'd have to research -- the term "research" is so
12 broad --

13 Q. Sure.

14 A. -- I'd have to review the article and see what you're
15 asking me about. It may or may not be applicable to things
16 that have been replicated and known over and over in terms of
17 like the late disclosure and things.

18 Q. Okay. I understand. And again, Doctor, so the Court is
19 well aware, you have not interviewed these children
20 whatsoever?

21 A. Not at all.

22 Q. Okay. And you have no personal experience in Honduran
23 culture, being in the Honduras or anything like that?

24 A. No. No.

25 MR. KISS: If I may have one moment, Your Honor?

1 THE COURT: You may.

2 MR. KISS: Nothing else, Your Honor. Thank you.

3 MS. LARSON: May I have a brief redirect, Your
4 Honor?

5 THE COURT: Yes. Go ahead.

6 REDIRECT EXAMINATION

7 BY MS. LARSON:

8 Q. You mentioned on cross-examination that gender and
9 cultural biases could affect recantation. Can you elaborate
10 what you meant by that.

11 A. Well, if somebody discloses and, for instance, there's --
12 I already mentioned the influence of stigma regarding
13 male/male perpetration, that affects male victims of sexual
14 assault who are offended by males.

15 If there's a very strong religious component or a
16 shame-based component to it, that may affect recantation, as
17 well as suspicion of systems. Often, for instance, I consult
18 in the tribal nations, and children will disclose. And then
19 once the government gets involved, because of the distrust of
20 the system or Children and Youth are involved and things like
21 that.

22 So there are other things that influence a child taking
23 it back to get out of the process, as well as a more typical
24 scenario mentioned by defense.

25 Q. Are you aware of anything either in the literature,

1 research, or anything in your numerous years of clinical
2 experience which indicates that the subject matters we
3 discussed here today stop or end at the borders of the
4 continental United States?

5 A. Absolutely not. I've worked with many offenders who are
6 able to describe their influence over victim response, who
7 have traveled across countries, adopted kids from other
8 countries.

9 Plus, there's a whole body of literature on refugees and
10 immigrants from sexual abuse that we are trained in how to
11 provide sensitive treatment to cultures of other countries.

12 MS. LARSON: Thank you. I have nothing further.

13 MR. KISS: One question, if I may, Your Honor?

14 THE COURT: Go ahead.

15 MR. KISS: Thank you, Judge.

16 RECROSS-EXAMINATION

17 BY MR. KISS:

18 Q. Doctor, I just have one question, and that question would
19 be: Can you point to the Court any single study about
20 Honduran culture or children in the Honduras in dealing with
21 the things you've described here today?

22 A. There's a lot of information on refugees from Honduras,
23 in particular, and the factors and issues that make Honduran
24 children excessively vulnerable to sexual exploitation, sexual
25 trafficking in terms of their response. There are stats about

1 reporting rates, what percentage of children, what ages,
2 things like that.

3 Q. As a followup to that, that's not -- I'm sorry, I
4 apologize, that's not what I asked you.

5 A. Okay.

6 Q. I'm talking about what you presented here about
7 recantation, about the late disclosure, things like that. Do
8 you have a single study that was done in Honduras that was
9 peer reviewed about Honduran children and what you have
10 described here today? Not whether they're being trafficked or
11 whether they are refugees or anything like that, but
12 specifically about Honduras about Honduran children.

13 A. There are studies out there. I don't have a single
14 reference in my hand.

15 Q. So you can't present to the Court what these studies are?

16 A. Not at this time.

17 MR. KISS: Thank you.

18 MS. LARSON: Nothing further, Judge.

19 Judge, may this -- I apologize, if the Court would
20 like to question the witness.

21 THE COURT: I was curious with regard to the issue
22 of recantation, whether that usually occurs when the child is
23 still under 18, or do the recantations occur very often after
24 a person is an adult?

25 THE WITNESS: It depends. The recantation would

1 depend, first of all, the age of disclosure. But second of
2 all, where and why might somebody recant. So if somebody
3 tells and is in foster care, and they go on and then they get
4 18 and the DA gets a hold of it, and now they're in a big mess
5 and they don't want to go through with it, they may recant
6 then.

7 So it has more to do with at what point in the
8 process is the allegation important. So if I have a child
9 who's behaviorally disturbed in foster care, and she's 16 or
10 17, and then she discloses and then, you know -- but she's
11 been abused at age 10. So there's no set, like, age
12 demarcation of when recantation happens. It tends to be more
13 reliant on what's going on in the child's life that may be
14 adding pressure, stress, or contribute to their decision to
15 not want to pursue this.

16 THE COURT: I have no further questions. Do you
17 have additional questions?

18 MS. LARSON: I do not, Your Honor.

19 MR. KISS: No, Your Honor. Thank you.

20 THE COURT: Thank you. You can step down.

21 THE WITNESS: May I be excused, Your Honor?

22 MS. LARSON: That's fine with the government --

23 MR. KISS: No objection, Your Honor. Thank you.

24 THE COURT: Yes, you may be excused.

25 THE WITNESS: Thank you, sir.

1 THE COURT: The witness has left the courtroom.

2 Attorney Larson, do you wish to make argument?

3 MS. LARSON: Sure. Do you mind if I use the
4 podium, Judge, just so I can spread my things out a little
5 more?

6 THE COURT: Yes. I would prefer that you do
7 because I can hear you better.

8 MS. LARSON: Judge, the government will rely
9 heavily on the argument that we made in our filing before the
10 Court of August 20th of 2015, that's Document 100. But I
11 think that the starting point is that the Federal Rules of
12 Evidence 702 is what is governing here, the testimony by an
13 expert witness, which is very clearly laid out that a witness
14 who is qualified as an expert by knowledge, skill, experience,
15 training or education may testify in the form of an opinion or
16 otherwise. And then those requirements are laid out.

17 The case law that develops from there, including
18 Daubert and the progeny that follows, clearly indicates that
19 Daubert does not require the exclusion of expert testimony
20 that does not involve scientific theory. There's obviously a
21 litany of case law out of the Ninth Circuit on that as well as
22 others.

23 If you're looking for Third Circuit precedent on
24 that, 657 F.3d 160, the *Walker* case, that's a Third Circuit
25 case out of 2011. As well as the more recent opinion, I

1 believe it's the *Bonner* opinion 469 Fed. at 119, a Third
2 Circuit case out of 2012. That may, in fact, be an
3 unpublished decision, Judge. But, nevertheless, when we're
4 talking about cases that do not involve scientific --
5 quote/unquote, scientific testimony what we're relying on here
6 is the personal knowledge and experience of the witness.
7 That's what's going to turn on whether or not the evidence or
8 the proffered evidence is, in fact, reliable.

9 That's what we have here, Judge. We have a very
10 qualified witness. She's qualified by her training, her
11 impeccable educational background, her pedigree, as well as
12 her years in professional practice. You heard that she has
13 the unique ability that she not only works with victims of
14 sexual abuse, including victims of child sexual abuse who are
15 now adults, as well as children who are victims of sexual
16 abuse, she also treats sex offenders and has the unique
17 experience of interviewing thousands of them, and has been
18 appointed by the governor of Pennsylvania several times. So
19 there's no doubt that she's qualified, Judge, to give this
20 testimony.

21 As well as this being reliable evidence, this is
22 backed up by literature and research, as well as, again, her
23 personal experience treating numerous people who have been the
24 victims of sexual abuse. She talked about various
25 characteristics of child sex abuse victims. She talked about

1 issues involving disclosure, how and why disclosures happen,
2 why there may be a delay, why there may be piecemeal or
3 incremental disclosure, as well as recantation.

4 She also touched on the importance of forensic
5 interviews and some of the nature of how a forensic interview
6 should be done. She's had trainings in the questions that
7 should be asked and the manner in which they should be
8 conducted.

9 For all of those reasons this testimony should be
10 admissible. It's clearly relevant, probative testimony that
11 is helpful to the jury to understand the issues that will be
12 going on here, and to assist them in reaching their ultimate
13 decision.

14 She testified that, in fact, these concepts we're
15 taking about, disclosure of sexual abuse, child sex abuse
16 victims, piecemeal disclosure, the delay in which children
17 disclose, recantation, all of that is so well outside the
18 purview of the average juror or the lay experience that,
19 unfortunately, there are still these myths based on faulty
20 information and misperceptions about how a victim,
21 quote/unquote, should behave.

22 This is not being offered to improperly bolster the
23 credibility of any of the witnesses. This clinician has very
24 plainly stated on direct and cross she has not interviewed
25 these victims, she is not diagnosing them, she is not

1 rendering an opinion as to whether or not they've been abused,
2 or suggesting that to the Court or in any way improperly
3 usurping the jury.

4 The litany of federal cases is clear that the exact
5 evidence that we're talking about is admissible in federal
6 court, and that's on page 3 of 7 of the filing I referred to
7 earlier, Your Honor, in Document 100.

8 So we renew those arguments made therein and
9 support to the Court that this has been uniformly used in
10 federal court and in cases exactly as this, and the government
11 should be permitted to elicit this testimony at trial.

12 Thank you.

13 THE COURT: Counsel.

14 MR. KISS: Thank you, Judge.

15 Your Honor, very briefly, if we were talking about
16 American children or we were talking about individuals raised
17 in American culture, we wouldn't be here because there'd be no
18 objection to that testimony.

19 But what we heard here, Your Honor, was an
20 individual who clearly has significant qualifications in the
21 area dealing with, as she said, with children here in the
22 United States and people who are, in fact, children and
23 offenders.

24 What we didn't hear, Judge, and the whole point of
25 our motion in this matter was that she has no experience with

1 children from the Honduran culture. She has no experience in
2 dealing with particularly that culture, but even she didn't --
3 she had no experience with other cultures in regard to that,
4 Your Honor.

5 That is a critical, critical point in our
6 determination -- in the Court's determination here is inasmuch
7 as it's reliable, does it fit this case. Does the evidence
8 that the government wishes to present through this expert fit
9 this case. And when you look at it, it just simply doesn't.

10 She could not articulate a single study that shows
11 the evidence she spoke about was applicable to Honduras in
12 particular, or particularly outside of the United States,
13 Canada, Western Europe. I asked her directly, Where's the
14 body of research. And she said, Canada, United States,
15 Western Europe, and she said because we can't get to those
16 other places. She can't say it extends past that. So if it
17 doesn't fit this particular case, we're truly talking about
18 apples and oranges.

19 And when we start doing that, we're confusing the
20 jury. We're bringing evidence into the jury that doesn't make
21 sense because it doesn't fit the particular charge in the
22 particular case.

23 And the Court raised some very interesting
24 questions about the age of this disclosure or recantation in
25 particular. And I think through our cross-examination it was

1 very clear, this occurs when children are typically very,
2 very, very young or younger, and it lessens over time, and
3 studies have shown that, as stated by her.

4 So our position is very clear, Your Honor, is while
5 this all may be good evidence if we were sitting in a
6 courtroom with American children or children raised in the
7 American culture or Western European culture or Canadian
8 culture, that would all be absolutely relevant and we wouldn't
9 be standing here.

10 But because we're talking about a very specific
11 culture, and it's the government's burden to show that that
12 evidence fits and would fit to the particular facts of this
13 case, they haven't done that. They have not shown any
14 evidence. And they cannot present any studies showing that
15 that is applicable and applies over to this particular culture
16 and these individuals who are above 18 at this point, Your
17 Honor.

18 Thank you.

19 THE COURT: Thank you.

20 Any additional argument?

21 MS. LARSON: No, Judge. I would just point out
22 very briefly -- I apologize. I should have said, Yes, very
23 briefly.

24 That misstates the testimony. On redirect she was
25 specifically asked, Do you have any reason, based on your

1 clinical experience and/or the body of research and literature
2 to believe that the topics you discussed here today -- and we
3 went through them, disclosure, the way in which it happens,
4 delays, piecemeal, recantations -- stops at the border of the
5 continental United States, and she said no.

6 She went on to specifically talk about her
7 experience with offenders who travel to other countries across
8 borders and engage in this type of abuse of children and the
9 methodologies that they use in her clinical experience there.

10 She talked about the body of research and
11 literature talking about refugees and immigrants who
12 experience the same thing. So that misstates the testimony.

13 And again, the progeny of cases in the Third
14 Circuit and otherwise makes clear that it's not about
15 scientific studies. We are talking about the reliability
16 based on specialized knowledge of the witness, which she
17 clearly has based on her training, her experience in the case
18 of clinical and forensic psychology for 20 years, and in
19 interviewing thousands of victims and offenders. So that's
20 why this testimony is admissible, regardless of where these
21 children were abused.

22 Thank you.

23 THE COURT: Before you are seated I wanted to ask a
24 couple questions. I have the correspondence from the
25 Department of Justice to Attorney Passarello regarding this

1 issue. Before that letter was sent to Attorney Passarello,
2 was any prior notice given to him that this witness would be
3 presented and what areas would be presented?

4 MS. LARSON: No, Judge. Notice was provided on
5 August 7th.

6 THE COURT: And was this prompted by a decision you
7 made or was there some inquiry that you were responding to?

8 MS. LARSON: This was a decision that we made to
9 provide unsolicited notice of our expert witness to allow the
10 defense the right to prepare for trial.

11 THE COURT: So prior to August 7th, the defendant
12 and counsel for the defendant would not have been aware that
13 the government intended to offer the testimony of this expert?

14 MS. LARSON: That's correct, Judge.

15 THE COURT: And the defendant filed notice today of
16 intent to present an expert witness, and it appears to the
17 Court that the reason this witness was added was in response
18 to your intent to present expert testimony. And that was
19 filed less than 30 days after the notice to defendant was
20 provided.

21 Are you opposing the defendant's request to have an
22 expert witness testify in response to your expert witness?

23 MS. LARSON: At the time that that motion to compel
24 was filed, absolutely. Because, as our motion indicated, we
25 had repeatedly asked for expert notice and had not been given

1 any. When we were, in fact, given the notice, the notice was
2 woefully insufficient, which was the purpose of that.

3 We're in a slightly different posture now. We have
4 been given a CV and we've been given a brief outline which,
5 you know, assuming that we agree that that complies with the
6 notice requirements -- which I'm not here to argue today --
7 that was the alternative argument in our motion, was to have
8 this expert witness here today -- because we start trial next
9 week -- so that the government would have the opportunity to
10 cross-examination their proposed expert, to test his
11 qualifications, and hold a Daubert hearing on whether or not
12 his proposed testimony -- which is rather vague and I do not
13 believe is within his area of expertise -- but again, we have
14 the ability to question that on cross-examination to be here
15 today to afford us that opportunity.

16 So given the fact that we did just receive this
17 notice, I believe yesterday. It might have been the day
18 before yesterday so I don't want to misspeak, but definitely
19 within the last 36 hours we received this notice. At this
20 point we would like the opportunity to cross examine their
21 expert on whatever proffer or proposed testimony they believe,
22 to undergo the same analysis that this Court is doing with the
23 government's expert.

24 THE COURT: All right. Thank you.

25 I will direct this to either or both defense

1 counsel. It would appear to the Court that if the defendant
2 is to be permitted to present expert testimony from Dr. --

3 MR. PASSARELLO: Dattillo.

4 THE COURT: -- Dattillo, that the government's
5 request that a similar proceeding to what we are doing today
6 would be a reasonable request.

7 Is he available to come and participate in a
8 Daubert proceeding relatively soon?

9 MR. PASSARELLO: Well, Judge, just so you get a
10 little bit of a background -- and I apologize. The government
11 has made requests regarding expert testimony under Rule 16 for
12 a while now. There was no reason to have an expert called
13 because we had no notification that they were going to provide
14 an expert.

15 When they did provide an expert, and we had filed a
16 motion to preclude her, in order to save -- attempt to save --
17 my client some funds, and I told them this in person when they
18 were at a meeting in my office a week ago, that I was hoping to
19 hold off until you ruled on that motion before I retained an
20 expert.

21 Our expert's called solely to rebut the expert that
22 the United States intends on calling. We just secured his
23 dates for trial. I did not ask him, Your Honor, in all
24 frankness, what availability he would have had before
25 September 8th, so I cannot answer you that. I cannot answer

1 that question at this time.

2 THE COURT: Well, how about the day of
3 September 8th, do you think he's available that date, or are
4 you saying you have no idea?

5 MR. PASSARELLO: What I am saying is he told me his
6 best available dates were September 25th.

7 THE COURT: For testimony?

8 MR. PASSARELLO: Yes. But I do not -- I might be
9 -- you know, to be here in person I don't know the answer. I
10 would have to contact him, and I could probably call him today
11 outside of this courtroom to see if I could get an answer
12 about his availability on the 8th.

13 THE COURT: Well, it appears to the Court that if
14 the Court permits testimony by Dr. Valliere, that I will also
15 permit testimony by your expert, provided he is qualified and
16 his testimony would be reliable and would fit the case. But
17 the only way for me to determine that would be to have another
18 proceeding like we had today.

19 MR. PASSARELLO: I understand. And, Your Honor,
20 like I said, I will attempt to get you an answer as quickly as
21 possible as soon as we leave this courtroom.

22 THE COURT: I will issue a decision tomorrow in
23 writing on the proceeding that we just had today. But to give
24 counsel, my inclination at this point is to permit the
25 testimony of the government's expert. And in fairness to the

1 defendant, as I said earlier, I would also approve testimony
2 by your expert for rebuttal.

3 However, since the government has raised the
4 objection, I don't know how I can determine whether this
5 person is qualified and his testimony is reliable and will fit
6 this case unless we have a proceeding like we did today.

7 MR. PASSARELLO: Understood.

8 THE COURT: So the sooner we can do that the
9 better. And what I would propose to do would be to do this
10 after court during the trial. I don't want to take time away
11 from the jury, and I don't want to take time away from
12 presentation of evidence in the trial. So as I've done in
13 other cases, I can hold the Daubert proceeding after the jury
14 is sent home for the day.

15 So if you can give me, and of course with notice to
16 the government, what days Dr. Dattillo would be available for
17 a proceeding like this, then I can schedule that.

18 MR. PASSARELLO: I will do so, Your Honor.

19 THE COURT: And, as I said, it would probably be in
20 the evening. We usually end testimony in the trial around
21 5 o'clock p.m., so sometime thereafter on a scheduled date.

22 I don't want it to go too late into the trial,
23 either. I realize that you're proposing that he could testify
24 toward the end of the trial. However, I would like to make
25 that decision on whether he will be permitted to offer opinion

1 testimony a lot sooner than that.

2 MR. PASSARELLO: Understood. And I will get dates
3 to the United States and I will get dates to the Court.

4 THE COURT: And this is directed to the government:
5 I understand your objection with regard to the timing of this.
6 However, given the timing of your notice to defendant and
7 given the importance of this case, both to the government and
8 to the defendant, I do not intend to permit you to offer
9 expert testimony and preclude the defendant from offering the
10 same type of testimony. So it is all or none. And my
11 inclination at this point would be to permit your expert to
12 offer testimony. But I am going to reserve, actually, the
13 specific ruling on that until tomorrow, because I want to go
14 through the factors carefully and issue a written decision.

15 Also, obviously you are going to oppose the
16 government's motion to preclude, but you will need to file
17 that.

18 MR. PASSARELLO: Yes. Your Honor, if I may, there
19 was another motion just filed today by the United States that
20 was handed to me at the table. I believe it was filed under
21 seal, if I'm not mistaken.

22 I intend on getting our response to the 404(b)
23 motion, the motion to exclude our expert, and the new answer
24 to the motion, I will be getting it all filed this evening.

25 THE COURT: Okay.

1 MR. PASSARELLO: And so I would just ask the
2 Court's indulgence in allowing me to get that filed this
3 evening.

4 THE COURT: I was going to ask you to do that, but
5 since you are volunteering to do it, that's better.

6 MR. PASSARELLO: Oh, yeah, sorry, Judge. We're
7 going to have to answer the one that's under seal, so we're
8 going to have to hand deliver that answer, so I'll try to get
9 it tomorrow. I'll file the other two this evening, and we'll
10 have to hand deliver the answer to the motion under seal
11 tomorrow morning.

12 THE COURT: Well, is your issue that it would need
13 to be filed under seal, your answer?

14 MR. PASSARELLO: Yes.

15 THE COURT: Well, I can give you permission to do
16 that without getting permission by filing another motion, if
17 that is what you wish.

18 MR. PASSARELLO: If you give me permission to do
19 it, then I will do so.

20 THE COURT: Usually you have to ask permission --

21 MR. PASSARELLO: Yes.

22 THE COURT: -- to file it under seal --

23 MR. PASSARELLO: Correct.

24 THE COURT: -- and I understand that. But in the
25 interests of the trial being next week, I will grant you

1 authority to file that response under seal without asking
2 again to do so.

3 MR. PASSARELLO: Thank you, Your Honor.

4 THE COURT: So you can do that all tonight then.

5 MR. PASSARELLO: I'll get it all done.

6 THE COURT: I do have a question. As part of your
7 requested voir dire --

8 MR. PASSARELLO: To the defense, Your Honor?

9 THE COURT: Your requested voir dire.

10 MR. PASSARELLO: Yes.

11 THE COURT: If you would look at Proposed Question
12 6 and explain to me the need for that, because that one was
13 one I didn't understand exactly why you were asking.

14 MR. PASSARELLO: I understand why most people
15 wouldn't understand why I'm asking that.

16 MS. LARSON: We might need to -- and I understand
17 -- I think I understand where this is going. Can we talk
18 about it at sidebar because of people being in the audience?

19 THE COURT: Would you prefer that also?

20 MR. PASSARELLO: I think it would be safer.

21 THE COURT: Is it a topic that would be appropriate
22 for sidebar?

23 MR. PASSARELLO: I would think more appropriate
24 than from the podium, Your Honor.

25 MS. LARSON: Yes.

1 THE COURT: Because, really, when I got that
2 proposed question I wasn't certain why you were asking that.

3 MR. PASSARELLO: I figured you wouldn't.

4 THE COURT: All right. You can come forward then.

5 (The following proceedings were held at sidebar:)

6 THE COURT: And I wasn't certain why it had
7 anything to do with the Comfort Inn, but I'm just guessing
8 that perhaps that is where some of the witnesses are staying.

9 MR. PASSARELLO: It's my understanding that's where
10 they're staying. Although I guess one is to sleep in -- I'm
11 not sure. But here's the issue -- and the only reason why I
12 raised that, when we were looking for hotels to house our
13 witnesses from the Honduras in, we went to the Comfort Inn.
14 And when approached about it, the lady at the front desk said,
15 I had heard all about the case from one of the agents from
16 Homeland Security or something, and that they had already
17 booked rooms there. So that would be the reason why. And so,
18 obviously, we're not staying at the Comfort Inn.

19 But that would be the reason why we ask that
20 question, just if anybody was related to or working at the
21 Comfort Inn, because not only does she know about the case,
22 but gave a lengthy dissertation to our investigator of how sad
23 it was for these children, and how priests are X, Y, and Z.
24 And that's the reason I have for that question being asked.

25 MS. HAINES: Well, Your Honor, of course, we know

1 nothing about what Mr. Passarello is talking about. And,
2 frankly, we found it quite interesting that he knew or had
3 reason to believe where our witnesses were being housed,
4 because it's my understanding he had booked his rooms even
5 prior to us inquiring about where to book rooms.

6 But based upon that, like I said, we have no idea
7 what was said or wasn't said to his investigators, we just
8 found it interesting that there would be that question asked
9 of potential jurors, without any understanding as to why that
10 would at all be relevant, and we still oppose such a question.

11 THE COURT: Well, when I first looked at it I
12 didn't really understand why that question would be asked, but
13 the more I thought about it I assumed that it had something to
14 do with witnesses staying at that facility, and that there was
15 some concern about the employees there interacting with the
16 witnesses or the agents, and it was just to make sure that
17 that person who works there doesn't get on the jury.

18 MS. LARSON: And I apologize, Judge, as you know, I
19 haven't done a trial with you before. So is where they're
20 employed one of your standard questions? If not, can we ask
21 that, you know, are you employed in the Johnstown area, if so
22 where are you employed? I mean, is that sufficient? I just
23 don't want to out the location of victims and witnesses.

24 MR. PASSARELLO: I don't have a problem with saying
25 that. My concern -- I think the Court can understand my

1 concern. And all I'm asking for, I just want to know if
2 anybody works at the Comfort Inn. We can ask where they're
3 employed. The problem though I have is asking if family
4 members, because it is fact specific. Say the people at the
5 front desk are the daughter or the niece or the son-in-law of
6 one of the members of the jury. My concern is they talked to
7 that person. And I can bring my investigator in if Attorney
8 Haines doesn't believe what I'm saying as to what that person
9 at the front desk told my investigator. She knew all about
10 the case.

11 I mean, so that's why I'm asking. And I don't know
12 if asking generally where they're employed covers the extent
13 of why I asked that question.

14 THE COURT: So you're concerned that the employee
15 may be someone in the immediate family, but not the juror who
16 was here?

17 MR. PASSARELLO: That's correct.

18 MS. LARSON: Doesn't it come out in the questions
19 about have you talked to anybody about the case, do you know
20 anything about the facts? I mean, we're going to have
21 problems because I've been shocked by the fact that this is in
22 the paper -- the local paper -- every day, and that there's
23 reporters here for a pretrial. I mean, that's not my
24 experience. So doesn't that get addressed with the other voir
25 dire questions about what have you heard about this case, have

1 you seen media, have you spoken to any person?

2 THE COURT: Well, I do ask them whether they have
3 any knowledge about the case or of any of the people involved
4 in the case, that is true. I am trying to think of a scenario
5 that you should be concerned with what wouldn't be covered by
6 whether they have any knowledge about the case. I guess the
7 only thing there would be that they might get someone talking
8 to them after the trial starts. But I always tell them they
9 are not to discuss the trial with anyone, and I have to assume
10 that they follow that instruction.

11 MR. PASSARELLO: Okay. Well, my concern is just
12 that, Judge. Assuming that you're asking members of the jury
13 if they have any knowledge about the case, that's great. They
14 go home, and daughter says to dad, did you get picked for the
15 jury --

16 THE COURT: Well, they are supposed to not do that,
17 and I can't follow them home every --

18 MR. PASSARELLO: I know.

19 THE COURT: -- night.

20 MR. PASSARELLO: I know that.

21 THE COURT: I assume they follow my instructions.

22 MR. PASSARELLO: I understand. I would hope that
23 they would. Okay. That was the reason.

24 THE COURT: I was curious about that question.

25 MR. PASSARELLO: Thank you.

1 THE COURT: Any other issues on the voir dire that
2 either party wants to raise?

3 MS. HAINES: The United States --

4 MR. PASSARELLO: They filed a...

5 THE COURT: I have seen the government's requested
6 questions and I have seen your questions. What I usually do
7 is I go through them and I put them into a supplemental
8 questionnaire, and the jurors would fill that out. I don't
9 necessarily use all the questions that you have asked me to
10 use. But they would fill that out that morning, and then you
11 would get a copy of it and you could ask follow-up questions.

12 MS. HAINES: And, Judge, actually as we were coming
13 down into court today the United States actually filed a
14 specific response.

15 THE COURT: I saw that.

16 MS. HAINES: Okay. And Number 6 was one of the
17 ones. And we also opposed 8, 10, 11, and 12 in our responses,
18 our specific reasons why we are opposed to asking those
19 questions as well.

20 THE COURT: I saw that. The ones, other than
21 Number 6, I can respond to without any additional argument.
22 But when I saw that question that was a new one on me, so I
23 wanted to ask Mr. Passarello why we were asking that.

24 MR. PASSARELLO: Just trying to cover all my bases.

25 THE COURT: My plan for next week is that we will

1 pick a jury and then we will send the jury home, and then if
2 we need to address anything else we will have part of that
3 afternoon. Hopefully we will get the jury picked. We are
4 calling in an extra 15 jurors, because I am anticipating that
5 a lot of people will have a very difficult time being a juror
6 in a three-week trial because of employment.

7 MR. PASSARELLO: I know you talked about this
8 before. Are you selecting four alternates or two?

9 THE COURT: I have actually decided on three.

10 MR. PASSARELLO: Okay.

11 THE COURT: And mainly the reason for that is that
12 the seating is such that I did not want to have the alternates
13 sitting out in front of the jury box. So there is 14 seats in
14 the jury box, and I can put one chair down at this end. That
15 gives us 15, and we hopefully won't lose more than three.

16 MR. PASSARELLO: Okay.

17 THE COURT: My experience here is that the jurors
18 in this area are pretty hardy people, and they rarely have to
19 be excused from the jury for things. So occasionally we might
20 lose one or two because of a family emergency or something
21 like that.

22 Three weeks, it's anybody's guess. I am hoping we
23 don't lose more than three. But that means you will each get
24 two additional preemptories for the alternates, but those will
25 be from only alternates.

1 MR. PASSARELLO: Correct. Understood.

2 MS. LARSON: Okay.

3 MR. PASSARELLO: Thank you.

4 THE COURT: We will run through that that day. I
5 am anticipating we will get a lot of requests for hardship.

6 MR. PASSARELLO: I anticipate that as well.

7 THE COURT: And normally what I do with those is if
8 it is really, really severe I probably would grant it,
9 regardless. But if it is borderline, I would have them in the
10 pool until the end, and then we would look and see if we have
11 enough. Then I would ask counsel whether or not you wish to
12 allow these people to be excused. If we don't have enough,
13 then just proceed.

14 MR. PASSARELLO: And, as I understand it, you ask
15 all the questions.

16 THE COURT: I ask them all the questions. However,
17 the questions on the questionnaires, based on what the
18 response is, I will call them up here and you can follow up on
19 those.

20 MR. PASSARELLO: I understand.

21 THE COURT: I anticipate it being fairly lengthy,
22 because of the length of the trial. I am calling 70, so if we
23 get 65 that should be enough to get us through. If we have
24 65, then we can have well over 20 cause challenges and still
25 be fine.

1 MR. PASSARELLO: We can do like some judges and
2 pull them out of Wal-Mart. Go get the sheriffs and pull them
3 out of Wal-Mart.

4 THE COURT: Well, if we don't finish on Tuesday --
5 and I hope we do -- we have the option of calling more in on
6 Wednesday and finishing it.

7 MR. PASSARELLO: And then Tuesday morning we're
8 starting promptly at 9 or 8?

9 THE COURT: The jurors report on Tuesday at 8:30.

10 MR. PASSARELLO: Okay.

11 THE COURT: We usually start the questioning about
12 10 or 10:15 because it takes that long to get the
13 questionnaires filled out, copied, and then I give you time to
14 read them.

15 MR. PASSARELLO: Okay.

16 MS. LARSON: Thank you.

17 MR. PASSARELLO: Thank you, Judge.

18 THE COURT: All right.

19 (The following proceedings were held in open
20 court:)

21 THE COURT: Other than the pending motions which I
22 am aware of, are there any other issues for the Court today
23 that we need to address?

24 MR. PASSARELLO: Nothing from the defense, Your
25 Honor.

1 MS. LARSON: No, Judge.

2 THE COURT: All right. Are you all familiar with
3 the courtroom technology here and how to operate everything,
4 or would you rather have someone give you a brief tutorial on
5 how it works?

6 MR. PASSARELLO: I know your prior law clerk gave
7 me a brief tutorial. I'm an old guy, so Dan's probably
8 better. If we can have someone just give him a quick tour.

9 THE COURT: We can do that today, if you wish to.
10 I know that Attorney Haines is in here frequently enough that
11 she probably doesn't need it.

12 Whenever the training fellow comes into Johnstown I
13 always sit in again, because I have forgotten something
14 between the last time and the current date. So Stephanie --
15 not Stephanie Haines but Stephanie Savino, my law clerk -- can
16 come in after we are done and give you a brief run-through on
17 how the system works, and also Kimberly Spangler is pretty
18 familiar with it.

19 Anything other than that?

20 MS. LARSON: I don't believe so, Judge.

21 THE COURT: Well, thank you. We will prepare an
22 opinion on this and file it tomorrow, and I am hoping to get
23 the decision on at least one of the other motions done first
24 thing in the morning. We will try to get to the other ones,
25 assuming you file your responses tonight, Attorney Passarello,

1 we will try to work on those tomorrow.

2 MR. PASSARELLO: I'll get them done tonight.

3 Thanks.

4 THE COURT: Thank you, all. Your presentation was
5 a help in my understanding this, and we will file a decision
6 tomorrow.

7 MR. PASSARELLO: Thank you.

8 THE COURT: We will be in recess until call of
9 Court.

10 (Proceedings concluded at 2:47 p.m.)

11 * * *

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13 CERTIFICATE OF OFFICIAL REPORTER

14 I, Kimberly K. Spangler, Federal Official Court Reporter,
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